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7 State Farm Mutual Automobile Insurance Company

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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA, SOUTHERN DIVISION**

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GINA CASTRONOVO-FLIHAN,  
Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, a foreign  
company; AND DOES I through V, inclusive  
Defendants.

CASE NO. 2:20-cv-1197-JCM-DJA

**JOINT PRE-TRIAL ORDER**

Following pretrial proceedings in this case, pursuant to Local Rule 16-3 and 16-4, IT IS SO  
ORDERED:

**I. STATEMENT OF ACTION**

This is an action for Breach of Contract under Nevada's common law. While the complaint originally held causes of action for Breach of the Covenant of Good Faith and Fair Dealing, and for violations of NRS § 686A.310, those causes of action were dismissed by a Partial Motion for Summary Judgement granted by this Court.<sup>1</sup>

The issues for trial are the allegations of State Farm's unreasonable and improper conduct

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<sup>1</sup> ECF 54.

1 in breaching the insurance policy with Plaintiff and Plaintiff's damages, if any.

2 **A. Plaintiff's Contentions**

- 3 1. Plaintiff performed all conditions of the insurance policy.
- 4 2. Plaintiff was owed benefits under the insurance policy.
- 5 3. Defendant failed to provide the insurance benefits due and owing under the
- 6 insurance policy.
- 7 4. Defendant breached the insurance policy by manufacturing reasons to deny
- 8 the insurance benefits due and owing to Plaintiff under the insurance policy.
- 9 5. Defendant breached the insurance policy by making the claims process an
- 10 adversarial or competitive process.
- 11 6. Defendant breached the insurance policy by relying upon insufficient,
- 12 speculative and/or biased information.
- 13 7. Defendant breached the insurance policy by failing to acknowledge and act
- 14 reasonable upon communication with respect to Plaintiff's claim under the insurance policy.
- 15 8. Defendant breached the insurance policy by failing to adopt and implement
- 16 reasonable standards for the prompt investigation and processing of claims.
- 17 9. Defendant breached the insurance policy by failing to promptly equate and
- 18 communicate the evaluations to Plaintiff.
- 19 10. Defendant breached the insurance policy by failing to offer to Plaintiff what
- 20 was owed.
- 21 11. Defendant breached the insurance policy by refusing to communicate with
- 22 Plaintiff and perform an investigation as to her general damages for the evaluation.
- 23 12. Defendant breached the insurance policy by reducing Plaintiff's claim by
- 24 improperly basing her claim upon Medicare values for medical treatment through a claims software
- 25 system.
- 26 13. Defendant breached the insurance policy by denying Plaintiff's claim for the
- 27 full policy limits.
- 28 14. Defendant breached the insurance policy by making misrepresentations to

1 Plaintiff.

2           15. Defendant breached the insurance policy by delaying in its investigation and  
3 evaluation of the claim.

4           16. Defendant breached the insurance policy by denying the claim before  
5 completing an evaluation.

6           17. Defendant breached the insurance policy by training its adjusters to deny  
7 benefits by making unreasonably low offers that are below the evaluations.

8           18. Defendant breached the insurance policy by refusing to communicate its  
9 evaluation to Plaintiff.

10           19. Defendant breached the insurance policy by failing to provide an explanation  
11 of its offer and evaluation to Plaintiff.

12           20. Defendant breached the insurance policy by misrepresenting and improperly  
13 asserting that the in-person meeting between its adjuster and Plaintiff has to take place in a public  
14 library.

15           21. Defendant breached the insurance policy by failing to consider the new  
16 information of Plaintiff's general damages after the in-person interview and increase the value of  
17 Plaintiff's claim.

18           22. Defendant breached its promise for the bargain that when the insured,  
19 Plaintiff, was in need, Defendant, as the insurance company, will be there to help like a Good  
20 Neighbor.

21           23. Defendant breached the insurance policy by failing to pay Plaintiff a portion  
22 of the policy benefits commonly known as the impasse payment or undisputed amount.

23           24. Defendant breached the insurance policy by failing to offer the full value of  
24 the evaluations for the owed policy benefits.

25           25. Defendant breached the insurance policy by failing to give equal  
26 considerations to Plaintiff.

27           26. Defendant breached the insurance policy by failing to comply with policies  
28 and procedures in retaining medical experts.

1                   27. Defendant breached the insurance policy by delaying in its retention of  
2 experts.

3                   28. Defendant breached the insurance policy by refusing to consider all of  
4 Plaintiff's medical expenses without any medical expert opinion and/or notations in the claim file  
5 as to the basis for the denial.

6                   29. Defendant breached the insurance policy by failing to consider any future  
7 general damages.

8                   30. Defendant breached the insurance policy by failing to handle the claim in  
9 accordance with its own policies and procedures.

10                  31. Defendant breached the insurance policy by failing to offer the full authority  
11 for the benefits owed to Plaintiff.

12                  32. Defendant breached the insurance policy by failing to give a prompt and  
13 forthright explanation to Plaintiff as to the company's position with respect to the claim.

14                  33. Defendant breached the insurance policy by failing to conduct a diligent  
15 search for facts as promptly as possible.

16                  34. Defendant breached the insurance policy by creating false or fictitious issues  
17 to avoid providing and/or paying benefits due and owing to Plaintiff.

18                  35. Plaintiff has been forced to retain the services of an attorney in prosecution  
19 of the Complaint, incurring expensive legal fees, court costs, and for fees for other professionals for  
20 which Defendant is responsible

21                  **B. Defendants' Contentions**

22                  Defendant contends that they did not breach the subject insurance policy contract, Policy  
23 Number #136 2037-F22-28.

24                  More specifically, Defendant contends the following:

25                   1. Prior to the subject accident in 2019, Plaintiff experienced a separate motor  
26 vehicle accident related injury when she was rear-ended in March 2017, and experienced neck pain  
27 radiating to her arms, shoulder pain, headaches, and low back pain radiating to her legs.

28                   2. Said third-party tortfeasor, Mr. Bacon, was insured under a liability policy

1 under Farmer's Insurance.

2           3. Plaintiff Castronovo-Flihan's complaint fails to state a cause of action against  
3 these answering defendants upon which relief can be granted.

4           4. Plaintiff Castronovo-Flihan did not fulfill her duty to cooperate with  
5 Defendant State Farm under the terms of the subject policy.

6           5. Defendant State Farm did not breach the terms of the subject policy, but  
7 instead simply requested a medical examination, as allowed under the terms of the subject policy,  
8 §6(a)(2).

9           6. Plaintiff's remaining damages, if any, were actually and proximately caused  
10 by her prior 2017 Motor Vehicle Accident.

11           7. The valuation of the claim by State Farm Mutual Automobile Insurance  
12 Company was reasonable.

13           8. Defendant State Farm complied with the terms of the subject policy, case law,  
14 and Nevada statutes.

15           9. If any damages are proven in this case, the basis of those damages lies only  
16 with the breach of contract claim.

17           10. State Farm generally denies Plaintiff's allegations set forth herein, and  
18 incorporates by reference the denials set forth in Defendant's Answer to Plaintiff's Complaint on  
19 file with the Court in this matter and raise the following affirmative defenses:

20                   (a) Plaintiff has failed to state a claim upon which relief could be granted.

21                   (b) Plaintiff failed to mitigate her damages.

22                   (c) The damages allegedly sustained by Plaintiff, if any, were not caused  
23 by any breach of contract or duty by Defendant State Farm Mutual  
24 Automobile Insurance Company, but rather by the acts or omissions  
25 of third persons who were not acting on behalf of Defendant State  
26 Farm Mutual Automobile Insurance Company

27                   (d) Defendant State Farm Mutual Automobile Insurance Company is  
28 informed and believes, and based upon information and belief, alleges

1 that the complaint, and each and every purported claim for relief in  
2 said Complaint, is subject to all the terms, conditions, provisions,  
3 definitions, limitations, exclusions, and endorsements in the subject  
4 insurance policy. Plaintiff's claim is barred, excluded, restricted,  
5 and/or limited accordingly.

6 (e) Plaintiff has failed to satisfy one or more conditions precedent and  
7 required under the subject insurance policy upon which she seeks  
8 recovery.

9 (f) Defendant State Farm Mutual Automobile Insurance Company has  
10 acted reasonably in good faith in all aspects under the circumstances  
11 known to it and continues to do so.

12 (g) Defendant State Farm Mutual Automobile Insurance Company has  
13 fulfilled its obligations under the subject policy, and that all actions it  
14 has taken relevant to Plaintiff's claim have been accomplished in  
15 good faith.

16 (h) Defendant State Farm Mutual Automobile Insurance Company did  
17 not violate any duty owed to Plaintiff under the common law,  
18 contract, or statute.

19 (i) The damages claimed by Plaintiff, if any, are speculative, are not  
20 supported by proof, and thus not compensable as a matter of law.

21 (j) The damages claimed by Plaintiff were not proximately caused in full  
22 by the accident described in the complaint.

23 (k) This suit is not ripe as Plaintiff has failed to establish a claim of legal  
24 entitlement under the terms of the policy of insurance.

25 (l) Any verdict against Defendant State Farm Mutual Automobile  
26 Insurance Company must be apportioned between injuries directly  
27 caused by the accident described in the Complaint and other medical  
28 conditions or injuries which may have predated or occurred

subsequent to said accident.

(m) Defendant State Farm Mutual Automobile Insurance Company is entitled to offset any amounts paid to Plaintiff for damages allegedly sustained in this action, including any amounts paid by or on behalf of any other insurer or responsible party, against any amounts that may be owed by Defendant to Plaintiff. Further, Defendant is allowed to offset additional amounts to the total value of Plaintiff's claim in accordance with the subject insurance policy terms and/or Nevada law.

(n) Defendant State Farm Mutual Automobile Insurance Company has been forced to retain the services of an attorney in defense of the Complaint, incurring expensive legal fees, court costs, and for fees for other professionals for which plaintiff is responsible.

(o) Defendant hereby incorporates by reference those affirmative defenses listed in FRCP 12(b).

(p) Plaintiff lacks legal entitlement to recover her claim as contemplated by the Nevada Supreme Court in *Pemberton v. Farmers Insurance Exchange*, 109 Nev. 789, P.2d 380 (1993).

## II. STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1332. Plaintiff Gina Castronovo-Flihan is a resident of the State of Nevada. Defendant State Farm Mutual Automobile Insurance Company is a foreign entity incorporated in Illinois, with its principle place of business in Illinois, that is authorized to conduct business in the State of Nevada. Further, Plaintiff seeks damages in excess of \$75,000, and therefore both requirements for federal diversity jurisdiction, pursuant to 28 U.S.C. § 1332 are met. The parties do not dispute the jurisdiction of this Court.

## III. ADMITTED FACTS

### A. The following facts are admitted by the parties and require no proof

1. The subject collision occurred as a result of third-party tortfeasor, Florian

1 Baculao-Bacon, crashing into the driver's side of Plaintiff's vehicle at a high rate of speed.

2 2. State Farm determined that Mr. Baculao-Bacon is 100% at fault for the  
3 subject collision, with Plaintiff Gina Castronovo-Flihan at 0% fault.

4 3. Said third-party tortfeasor, Mr. Bacon, was insured under a liability policy  
5 under Farmer's Insurance.

6 4. Farmer's Insurance paid Plaintiff Gina Castronovo-Flihan the policy limits  
7 of \$50,000.00 on or about May 16, 2019.

8 5. This action arises out of an insurance dispute following an automobile  
9 accident.

10 6. At the time of the subject collision, January 23, 2019, Plaintiff Gina  
11 Castronovo-Flihan held a State Farm Mutual Automobile Insurance Company auto insurance policy,  
12 policy number 136 2037-F22-28.

13 7. This policy, policy number 136 2037-F22-28, had underinsured motorist  
14 benefits of \$100,000 policy limit per person, and a \$300,000 policy limit per incident.

15 8. Defendant has not paid any portion of the policy benefits to Plaintiff.

16 9. Plaintiff suffered bodily injuries as a result of the subject collision on January  
17 23, 2019.

18 **IV. UNCONTESTED FACTS**

19 **A. The following facts, though not admitted, will not be contested at trial by**  
20 **evidence to the contrary**

21 1. After plaintiff submitted her proof of claim and provided medical records,  
22 defendant sent her a letter communicating its refusal to evaluate the claim until it received proof of  
23 third-party policy limits.

24 2. Plaintiff supplemented her proof of claim with evidence that the underlying  
25 tortfeasor's policy limits were exhausted.

26 3. Defendant offered Plaintiff \$6,333.32 on September 24, 2019 to settle her  
27 claim.

28 4. Defendant sent a representative to counsel for plaintiff's office on November



20, 2019 after months of Plaintiff requesting the same.

**V. ISSUES OF FACT FOR TRIAL**

The following are the issues of fact to be tried and determined at trial

**A. Plaintiff's Issues of Fact for Trial**

1. Whether Defendant failed to provide the insurance benefits due and owing under the insurance policy.

2. Whether Defendant breached the insurance policy by manufacturing reasons to deny the insurance benefits due and owing to Plaintiff under the insurance policy.

3. Whether Defendant breached the insurance policy by making the claims process an adversarial or competitive process.

4. Whether Defendant breached the insurance policy by failing to acknowledge and act reasonable upon communication with respect to Plaintiff's claim under the insurance policy.

5. Whether Defendant breached the insurance policy by failing to adopt and implement reasonable standards for the prompt investigation and processing of claims.

6. Whether Defendant breached the insurance policy by failing to promptly equate and communicate the evaluations to Plaintiff.

7. Whether Defendant breached the insurance policy by failing to offer to Plaintiff what was owed.

8. Whether Defendant breached the insurance policy by refusing to communicate with Plaintiff and perform an investigation as to her general damages for the evaluation.

9. Whether Defendant breached the insurance policy by reducing Plaintiff's claim by improperly basing her claim upon Medicare values for medical treatment through a claims software system.

10. Whether Defendant breached the insurance policy by denying Plaintiff's claim for the full policy limits.

11. Whether Defendant breached the insurance policy by making misrepresentations to Plaintiff.

1                   12. Whether Defendant breached the insurance policy by delaying in its  
2 investigation and evaluation of the claim.

3                   13. Whether Defendant breached the insurance policy by denying the claim  
4 before completing an evaluation.

5                   14. Whether Defendant breached the insurance policy by training its adjusters to  
6 deny benefits by making low-ball offers that are below the evaluations.

7                   15. Whether Defendant breached the insurance policy by refusing to  
8 communicate its evaluation to Plaintiff.

9                   16. Whether Defendant breached the insurance policy by failing to provide an  
10 explanation of its offer and evaluation to Plaintiff.

11                   17. Whether Defendant breached the insurance policy by misrepresenting and  
12 improperly asserting that the in-person meeting between its adjuster and Plaintiff has to take place  
13 in a public library.

14                   18. Whether Defendant breached the insurance policy by failing to consider the  
15 new information of Plaintiff's general damages after the in-person interview and increase the value  
16 of Plaintiff's claim.

17                   19. Whether Defendant breached the insurance policy by failing to pay Plaintiff  
18 a portion of the policy benefits commonly known as the impasse payment or undisputed amount.

19                   20. Whether Defendant breached the insurance policy by failing to offer the full  
20 value of the evaluations for the owed policy benefits.

21                   21. Whether Defendant breached the insurance policy by failing to give equal  
22 considerations to Plaintiff.

23                   22. Whether Defendant breached the insurance policy by failing to comply with  
24 policies and procedures in retaining medical experts.

25                   23. Whether Defendant breached the insurance policy by delaying in its retention  
26 of experts.

27                   24. Whether Defendant breached the insurance policy by refusing to consider all  
28 of Plaintiff's medical expenses without any medical expert opinion and/or notations in the claim file

as to the basis for the denial.

25. Whether Defendant breached the insurance policy by failing to consider future general damages.

26. Whether Defendant breached the insurance policy by failing to handle the claim in accordance with its own policies and procedures.

27. Whether Defendant breached the insurance policy by failing to offer the full authority for the benefits owed to Plaintiff.

28. Whether Defendant breached the insurance policy by failing to pay the benefits due and owing to Plaintiff.

29. Whether Defendant breached the insurance policy by relying upon insufficient, speculative and/or biased information.

30. Whether Defendant breached the insurance policy by failing to give a prompt and forthright explanation to Plaintiff as to the company's position with respect to the claim.

31. Whether Defendant breached the insurance policy by failing to conduct a diligent search for facts as promptly as possible.

32. Whether Defendant breached the insurance policy by creating false or fictitious issues to avoid providing and/or paying benefits due and owing to Plaintiff.

33. Whether Defendant breached its promise for the bargain that when the insured, Plaintiff, was in need, Defendant, as the insurance company, will be there to help like a Good Neighbor.

34. The damages suffered by Plaintiff.

**B. Defendant's Issues of Fact for Trial**

1. Whether or not Plaintiff's medical bills incurred after the January 23, 2019, subject accident were reasonably related to said subject motor vehicle accident.

2. Whether or not Plaintiff's medical bills incurred after the subject accident were more reasonably related to Plaintiff's motor vehicle accident in May 2017.

3. Whether or not Plaintiff's medical bills incurred were reasonable in scope to the injury occurred.

**VI. ISSUES OF LAW FOR TRIAL**

The following are the issues of law to be tried and determined at trial:

**A. Plaintiff's Issues of Law for Trial**

1. Whether Defendant failed to provide the insurance benefits due and owing under the insurance policy.
2. Whether Defendant breached the insurance policy by manufacturing reasons to deny the insurance benefits due and owing to Plaintiff under the insurance policy.
3. Whether Defendant breached the insurance policy by making the claims process an adversarial or competitive process.
4. Whether Defendant breached the insurance policy by failing to acknowledge and act reasonable upon communication with respect to Plaintiff's claim under the insurance policy.
5. Whether Defendant breached the insurance policy by failing to adopt and implement reasonable standards for the prompt investigation and processing of claims.
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8. Whether Defendant breached the insurance policy by refusing to communicate with Plaintiff and perform an investigation as to her general damages for the evaluation.
9. Whether Defendant breached the insurance policy by reducing Plaintiff's claim by improperly basing her claim upon Medicare values for medical treatment through a claims software system.
10. Whether Defendant breached the insurance policy by denying Plaintiff's claim for the full policy limits.
11. Whether Defendant breached the insurance policy by making

1 misrepresentations to Plaintiff.

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3 investigation and evaluation of the claim.

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5 before completing an evaluation.

6           14. Whether Defendant breached the insurance policy by training its adjusters to  
7 deny benefits by making low-ball offers that are below the evaluations.

8           15. Whether Defendant breached the insurance policy by refusing to  
9 communicate its evaluation to Plaintiff.

10           16. Whether Defendant breached the insurance policy by failing to provide an  
11 explanation of its offer and evaluation to Plaintiff.

12           17. Whether Defendant breached the insurance policy by misrepresenting and  
13 improperly asserting that the in-person meeting between its adjuster and Plaintiff has to take place  
14 in a public library.

15           18. Whether Defendant breached the insurance policy by failing to consider the  
16 new information of Plaintiff's general damages after the in-person interview and increase the value  
17 of Plaintiff's claim.

18           19. Whether Defendant breached the insurance policy by failing to pay Plaintiff  
19 a portion of the policy benefits commonly known as the impasse payment or undisputed amount.

20           20. Whether Defendant breached the insurance policy by failing to offer the full  
21 value of the evaluations for the owed policy benefits.

22           21. Whether Defendant breached the insurance policy by failing to give equal  
23 considerations to Plaintiff.

24           22. Whether Defendant breached the insurance policy by failing to comply with  
25 policies and procedures in retaining medical experts.

26           23. Whether Defendant breached the insurance policy by delaying in its retention  
27 of experts.

28           24. Whether Defendant breached the insurance policy by refusing to consider all

1 of Plaintiff's medical expenses without any medical expert opinion and/or notations in the claim file  
2 as to the basis for the denial.

3 25. Whether Defendant breached the insurance policy by failing to consider  
4 future general damages.

5 26. Whether Defendant breached the insurance policy by failing to handle the  
6 claim in accordance with its own policies and procedures.

7 27. Whether Defendant breached the insurance policy by failing to offer the full  
8 authority for the benefits owed to Plaintiff.

9 28. Whether Defendant breached the insurance policy by failing to pay the  
10 benefits due and owing to Plaintiff.

11 29. Whether Defendant breached the insurance policy by relying upon  
12 insufficient, speculative and/or biased information.

13 30. Whether Defendant breached the insurance policy by failing to give a prompt  
14 and forthright explanation to Plaintiff as to the company's position with respect to the claim.

15 31. Whether Defendant breached the insurance policy by failing to conduct a  
16 diligent search for facts as promptly as possible.

17 32. Whether Defendant breached the insurance policy by creating false or  
18 fictitious issues to avoid providing and/or paying benefits due and owing to Plaintiff.

19 33. Whether Defendant breached its promise for the bargain that when the  
20 insured, Plaintiff, was in need, Defendant, as the insurance company, will be there to help like a  
21 Good Neighbor.

22 34. The damages suffered by Plaintiff.

23 35. Any issue of fact set forth above which is more properly regarded as an issue  
24 of law.

25 **B. Defendant's Issues of Law for Trial**

26 1. Whether Plaintiff's claim for Breach of Contract has any merit.

27 2. The legal propriety of remedies, including damages, equitable relief, interest,  
28 attorney's fees, and costs recoverable by Plaintiff as a matter of law in the event that she prevails on

the jury's verdict.

3. Whether or not Plaintiff fulfilled her duty to cooperate with State Farm under the terms of the subject policy.

4. Any issue of fact set forth above which is more properly regarded as an issue of law.

## VII. EVIDENCE

### A. The following exhibits are stipulated into evidence in this case and may be so marked by the clerk

- (a) Traffic Accident Report: PLT ECC 0069-0076;
- (b) Photos of Collision: PLT ECC 0077-0080;
- (c) Redacted Non-Confidential Certified Policy: SF POL 1-60
- (d) Redacted Non-Confidential State Farm Claim File: SF 1-1746
- (e) State Farm Claim Notes: SF 1-242
- (f) Claims Correspondence: PLT ECC 0081-2288
- (g) State Farm Auto Injury Evaluation: SF 181-187
- (h) Non-Confidential Portions of State Farm Auto Claim Manual:  
CASGIN00000001PROD - CASGIN00000030PROD
- (i) Non-Confidential Portions of State Farm Employees Education and  
Training: CASGIN00000031PROD - CASGIN00000033PROD
- (j) Non-Confidential State Farm Materials: PLT DOEW 0137-0227
- (k) Redacted Medical Records and Bills from American Medical  
Responses: PLT ECC 2289-2297
- (l) Redacted Medical Bill from Vituity NV Koury Partners PLLC  
(records included in St. Rose Dominican Hospital Records): PLT  
ECC 2298-2299
- (m) Redacted Radiology Associates of Nevada Bill (records included in  
St. Rose Dominican Hospital Records): PLT ECC 2300-2301
- (n) Redacted Medical Records and Bills from Dignity Health-St. Rose

- 1 Dominican Hospital-San Martin Campus (Imaging Produced on CD):
- 2 PLT ECC 2302-2321; PLT 1<sup>ST</sup> 001-145
- 3 (o) Redacted Medical Records and Bills from FYZICAL Therapy and
- 4 Balance Centers: PLT ECC 2322-2348
- 5 (p) Redacted Medical Records and Bills from Well Care Medical Group,
- 6 LLC-Bellavue Medical: PLT ECC 2349-2387; PLT 1<sup>ST</sup> 146-200;
- 7 PLT 2<sup>nd</sup> 001-003
- 8 (q) Redacted Medical Records and Bills from SimonMed (imaging
- 9 produced on CD): PLT ECC 2388-2411; PLT 1<sup>ST</sup> 201-232; PLT 3<sup>RD</sup>
- 10 001
- 11 (r) Redacted Medical Records and Bills from Neurocare of Nevada: PLT
- 12 ECC 2412-2516; PLT 1<sup>ST</sup> 233-344
- 13 (s) Redacted Medical Records and Bills from Desert Orthopedic Center:
- 14 PLT ECC 2517-2545
- 15 (t) Redacted Medical Records and Bills from Las Vegas Fire & Rescue:
- 16 PLT ECC 2546-2559
- 17 (u) Redacted Bills from Shadow Emergency Physicians (records
- 18 included in Summerlin Hospital Records): PLT ECC 2560-2565
- 19 (v) Redacted Bills from Desert Radiologists (records included in
- 20 Summerlin Hospital records): PLT ECC 2566-2568
- 21 (w) Redacted Medical Records and Bills from Summerlin Hospital:
- 22 PLTECC 2569-2658
- 23 (x) Redacted Medical Records and Bills from Siems Lasik & Eye
- 24 Centers: PLT ECC 2659-2661
- 25 (y) Redacted Medical Records and Bills from Cardiology &
- 26 Cardiovascular Consultants: PLT ECC 2662-2713
- 27 (z) Redacted Medial Records and Bills from CVS Pharmacy: PLT ECC
- 28 2714-2725; PLT 2<sup>ND</sup> 004-009



- 1 (aa) Redacted Medical Record from Clark County Fire Dept: PLT 1<sup>ST</sup> 245-  
2 350
- 3 (bb) Redacted Medical Records and Bills from Summerlin Hospital  
4 Outpatient Therapy Center: PLT 1<sup>ST</sup> 351-469
- 5 (cc) Redacted Medical Records and Bills from Southwest Medical  
6 Associates Butler Family Medical Center: PLT 1<sup>ST</sup> 470-509
- 7 (dd) Redacted Medical Records and Bills for Las Vegas Radiology: PLT  
8 1<sup>ST</sup> 510-522
- 9 (ee) Medical Records & Bills from Gobinder Chopra, M.D.: SF 1747-  
10 1860
- 11 (ff) Medical Records & Bills from Las Vegas Radiology: SF 1861-1873
- 12 (gg) Medical Records & Bills from SimonMed: SF 1874-1922
- 13 (hh) Medical Records from St. Rose Dominican Hospital: SF 1923-2057
- 14 (ii) Medical Records from CVS Pharmacy: SF 2058-2062
- 15 (jj) Medical Records & Bills from Desert Orthopedic Center: SF 2063-  
16 2177
- 17 (kk) Medical Records from Southwest Medical Associates: SF 2178-2193
- 18 (ll) Medical Records & Bills from Summerlin Hospital: SF 2194-2404
- 19 (mm) All exhibit listed by either Party
- 20 (nn) All documents identified during discovery
- 21 (oo) Responses to Interrogatories
- 22 (pp) Requests to Requests for Production
- 23 (qq) Requests to Requests for Admission
- 24 (rr) Rebuttal and/or impeachment documents

25 **B. As to the following exhibits, the party against whom the same will be offered**  
26 **objections to their admission on the grounds stated**

- 27 1. Set forth the Plaintiff's exhibits and objections to them.
- 28 2. Set forth the Defendant's exhibits and objections to them.

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**C. Electronic evidence**

N/A.

**D. Depositions**

1. Plaintiff will offer the following depositions: None.
2. Defendant will offer the following depositions: None.

**E. Objections to Depositions**

1. Defendant objects to plaintiff's depositions as follows: None.
2. Plaintiff objects to defendant's depositions as follows: None.

**VIII. WITNESSES**

**A. Plaintiff's Witnesses**

1. Plaintiff Gina Castronovo-Flihan  
c/o Ian M. McMenemy, Esq.  
McMenemy Holmes PLLC  
1645 Village Center Circle, Suite 291  
Las Vegas, Nevada 89134
2. James Flihan  
c/o Ian M. McMenemy, Esq.  
McMenemy Holmes PLLC  
1645 Village Center Circle, Suite 291  
Las Vegas, Nevada 89134
3. Jimmy Flihan  
c/o Ian M. McMenemy, Esq.  
McMenemy Holmes PLLC  
1645 Village Center Circle, Suite 291  
Las Vegas, Nevada 89134
4. Brandon Flihan  
c/o Ian M. McMenemy, Esq.  
McMenemy Holmes PLLC  
1645 Village Center Circle, Suite 291  
Las Vegas, Nevada 89134
5. Fred Flihan  
c/o Ian M. McMenemy, Esq.  
McMenemy Holmes PLLC  
1645 Village Center Circle, Suite 291  
Las Vegas, Nevada 89134

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- 1                   6.       Arletia Marshall  
2                   Claims Specialist  
3                   State Farm Mutual Automobile Insurance Company  
4                   c/o Lewis Brisbois Bisgaard Smith LLP.  
5                   6385 S. Rainbow Boulevard, Suite 600  
6                   Las Vegas, Nevada 89118
- 7                   7.       Michele Maglione  
8                   Mobile Adjuster  
9                   State Farm Mutual Automobile Insurance Company  
10                  c/o Lewis Brisbois Bisgaard Smith LLP.  
11                  6385 S. Rainbow Boulevard, Suite 600  
12                  Las Vegas, Nevada 89118
- 13                8.       Jake Geddes  
14                  Team Manager  
15                  State Farm Mutual Automobile Insurance Company  
16                  c/o Lewis Brisbois Bisgaard Smith LLP.  
17                  6385 S. Rainbow Boulevard, Suite 600  
18                  Las Vegas, Nevada 89118
- 19                9.       Jason Snyder  
20                  Team Manager  
21                  State Farm Mutual Automobile Insurance Company  
22                  c/o Lewis Brisbois Bisgaard Smith LLP.  
23                  6385 S. Rainbow Boulevard, Suite 600  
24                  Las Vegas, Nevada 89118
- 25                10.      FRCP 30(b)(6) witness for:  
26                  State Farm Mutual Automobile Insurance Company  
27                  c/o Lewis Brisbois Bisgaard Smith LLP.  
28                  6385 S. Rainbow Boulevard, Suite 600  
                    Las Vegas, Nevada 89118

**B.     Plaintiff's Expert Witnesses**

- 1                   1.       Enrico Fazzini, D.O., Ph.D., F.A.C.N.  
2                   291 N. Pecos Road  
3                   Henderson, NV 89704
- 4                   2.       Christopher Platt, PT, DPT  
5                   C/O FYSICAL Therapy & Balance Centers  
6                   9070 W. Cheyenne Ave. Suite 100  
7                   Las Vegas, NV 89129
- 8                   3.       Rafael Mirchou, MD, FABS  
9                   C/O Well CareMedical Group LLC, Bellavue Medical  
10                  7488 West Sahara Avenue  
11                  Las Vegas, NV  
12                  (702) 641-1240
- 13                4.       Gobinder S. Chopra, MD  
14                  C/O Neurocare of Nevada  
15                  6410 Medical Center, Suite A-100  
16                  Las Vegas, NV 89148

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5. Thomas Dunn, MD  
C/O Desert Orthopedic Center  
2800 E. Desert Inn Road, Suite 100  
Las Vegas, NV 89121
6. Christine Derhake, PT, DPT  
C/O Summerlin Hospital Outpatient Therapy Center  
657 Town Center Dr., Suite 117  
Las Vegas, NV 89144
7. Stephen Strzelec  
C/O Strzelec Consulting Services  
20719 NE 8<sup>th</sup> St.  
Sammamish, WA 98074
8. All witnesses identified by any other party to this case.
9. Any and all custodians of record and/or persons most knowledgeable of any and all entities from which records may be obtained, including, but not limited to, employers, schools, government agencies, private entities, and/or insurance companies.
10. Any and all witnesses, including rebuttal or impeachment witnesses, offered by the Plaintiffs or other parties to this action.
11. The parties reserve the right to object to any witness identified by either party.

**C. Defendant's Possible Witnesses**

1. Gina Castronovo-Flihan  
c/o Ian M. McMenemy, Esq.  
McMenemy Holmes PLLC  
1645 Village Center Circle, Suite 291  
Las Vegas, Nevada 89134
2. James Flihan  
c/o Ian M. McMenemy, Esq.  
McMenemy Holmes PLLC  
1645 Village Center Circle, Suite 291  
Las Vegas, Nevada 89134
3. Jimmy Flihan  
c/o Ian M. McMenemy, Esq.  
McMenemy Holmes PLLC  
1645 Village Center Circle, Suite 291  
Las Vegas, Nevada 89134

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- 1 4. Brandon Flihan  
2 c/o Ian M. McMenemy, Esq.  
3 McMenemy Holmes PLLC  
1645 Village Center Circle, Suite 291  
Las Vegas, Nevada 89134
- 4 5. Fred Flihan  
5 c/o Ian M. McMenemy, Esq.  
6 McMenemy Holmes PLLC  
1645 Village Center Circle, Suite 291  
Las Vegas, Nevada 89134
- 7 6. Arletia Marshall  
8 Claims Specialist  
9 State Farm Mutual Automobile Insurance Company  
c/o Lewis Brisbois Bisgaard Smith LLP.  
10 6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118
- 11 7. Michele Maglione  
12 Mobile Adjuster  
13 State Farm Mutual Automobile Insurance Company  
c/o Lewis Brisbois Bisgaard Smith LLP.  
14 6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118
- 15 8. Jake Geddes  
16 Team Manager  
17 State Farm Mutual Automobile Insurance Company  
c/o Lewis Brisbois Bisgaard Smith LLP.  
18 6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118
- 19 9. Jason Snyder  
20 Team Manager  
21 State Farm Mutual Automobile Insurance Company  
c/o Lewis Brisbois Bisgaard Smith LLP.  
22 6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118
- 23 10. Enrico Fazzini, D.O., Ph.D., F.A.C.N.  
24 291 N. Pecos Road  
25 Henderson, NV 89704
- 26 11. Christopher Platt, PT, DPT  
27 C/O FYSICAL Therapy & Balance Centers  
28 9070 W. Cheyenne Ave. Suite 100  
Las Vegas, NV 89129
12. Rafael Mirchou, MD, FABS  
C/O Well CareMedical Group LLC, Bellavue Medical  
7488 West Sahara Avenue  
Las Vegas, NV  
(702) 641-1240

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13. Gobinder S. Chopra, MD  
C/O Neurocare of Nevada  
6410 Medical Center, Suite A-100  
Las Vegas, NV 89148
14. Thomas Dunn, MD  
C/O Desert Orthopedic Center  
2800 E. Desert Inn Road, Suite 100  
Las Vegas, NV 89121
15. Christine Derhake, PT, DPT  
C/O Summerlin Hospital Outpatient Therapy Center  
657 Town Center Dr., Suite 117  
Las Vegas, NV 89144
16. FRCP 30(b)(6) witness for:  
State Farm Mutual Automobile Insurance Company  
c/o Lewis Brisbois Bisgaard Smith LLP.  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118
17. Caleb Myers  
Messner Reeves, LLP  
8945 W Russell Rd. #300  
Las Vegas, NV 89148
18. Brock Ohlson, Esq.  
Brock Ohlson Injury Lawyers  
6060 Elton Ave.  
Las Vegas, Nevada 89107

**D. Defendant's Expert Witnesses**

1. Andrew Cash, M.D., P.C.  
Desert Institute of Spine Care  
5130 S. Ft. Apache Rd., Box 215-415  
Las Vegas, NV 89148
2. Mark Winkler, M.D.  
8 Morning Sky Lane  
Las Vegas, Nevada 89135
3. David L. Ginsburg, M.D.  
851 S. Rampart Boulevard, Suite 115  
Las Vegas, NV 89145
4. Edward McKinnon  
Claims Resource Management Inc.  
33345 Santiago Rd.  
Acton, CA 93510
5. All witnesses identified by any other party to this case.
6. Any and all custodians of record and/or persons most knowledgeable of any

and all entities from which records may be obtained, including, but not limited to, employers, schools, government agencies, private entities, and/or insurance companies.

7. Any and all witnesses, including rebuttal or impeachment witnesses, offered by the Plaintiffs or other parties to this action.

8. The parties reserve the right to object to any witness identified by either party.

#### **IX. PROPOSED TRIAL DATES**

Counsel have met and submitted a list of three agreed-upon trial dates. It is expressly understood by the undersigned that the Clerk will set the trial of this matter on one of the agreed-upon dates, if possible, if not, the trial will be set at the convenience of the Court's calendar:

**PARTIES REQUEST:** The Attorneys or parties have met and jointly offer these trial dates:

**1. 01/16/2024    2. 01/22/2024    3. 02/05/2024**

It is expressly understood by the undersigned that the court will set the trial of this matter on one of the agreed upon dates if possible, if not, the trial will be set at the convenience of the court's calendar.

#### **X. PROPOSED TRIAL DURATION**

It is estimated that the trial herein will take a total of **10-12** days.

**APPROVED AS TO FORM AND CONTENT.**

DATED this 13<sup>th</sup> day of November, 2023

DATED this 13<sup>th</sup> day of November, 2023

MCMENEMY | HOLMES PLLC

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Ian M. McMenemy

Ian M. McMenemy, Esq.

Nevada Bar No. 13190

Dustun H. Holmes, Esq.

Nevada Bar No. 12776

1645 Village Center Cir., Ste 291

Las Vegas, Nevada 89134

By: /s/ Frank A. Toddre, II

Robert W. Freeman, Esq.

Nevada Bar No. 3062

Frank A. Toddre, II

Nevada Bar No. 11474

6385 S. Rainbow Blvd, Suite 600

Las Vegas, Nevada 89118

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**XI. ACTION BY THE COURT**

(a) This case is set for court/jury trial on the stacked calendar on **February 5, 2024, at 9:00 a.m.** Calendar Call shall be held on **January 31, 2024, at 1:30 p.m.**

(b) An original and two (2) copies of each trial brief shall be submitted to the clerk on or before Calendar Call.

(c) Jury Trials:

(1) An original and two (2) copies of all instructions requested by either party shall be submitted to the clerk for filing on or before: Calendar Call.,

(2) An original and two (2) copies of all suggested questions of the parties to be asked of the jury panel by the Court on voir dire shall be submitted to the clerk for filing on or before: Calendar Call.

(d) Court Trials:

Not applicable.

(e) Counsel shall serve a copy of any trial brief, proposed findings of fact and conclusions of law, proposed voir dire questions, and proposed jury instructions upon opposing counsel contemporaneously with the filing thereof with the Court.

The foregoing pretrial order has been approved by the parties to this action as evidenced by the signatures of their counsel hereon, and the order is hereby entered and will govern the trial of this case. This order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

IT IS SO ORDERED:

DATED November 20, 2023.

  
UNITED STATES DISTRICT COURT JUDGE